

1 CHARLES B. WALKER
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2 City of San Diego Ethics Commission
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4 Complainant
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8 **BEFORE THE CITY OF SAN DIEGO**
9 **ETHICS COMMISSION**

10 In the Matter of) Case No. C02-6
11 League of Conservation Voters, San Diego;)
Michael Beck) **STIPULATION, DECISION**
12 Respondents.) **AND ORDER**
13 _____)

14 **THE PARTIES STIPULATE AS FOLLOWS:**

15 1. Complainant Charles B. Walker is the Executive Director of the City of San
16 Diego Ethics Commission [Ethics Commission]. The Ethics Commission is charged with a duty
17 to administer, implement, and enforce local governmental ethics laws contained in the San Diego
18 Municipal Code [SDMC] relating to, among other things, campaign finance as set forth in the
19 City's Campaign Control Ordinance [ECCO].

20 2. Respondent League of Conservation Voters, San Diego [LCV] is an organization
21 registered with the State of California as a General Purpose Recipient Committee that received
22 contributions of \$1,000 or more in a calendar year to support or oppose state or local candidates
23 in connection with the March 5, 2002, Primary Election.

24 3. At all relevant times herein, respondent Michael Beck [Treasurer] was the treasurer of
25 LCV.

26 4. LCV and the Treasurer are referred to herein collectively as "Respondents."

27 5. This Stipulation, Decision and Order [Stipulation] will be submitted for consideration by
28 the Ethics Commission at its next scheduled meeting, and the agreements contained herein are

1 contingent upon the approval of the Stipulation and the accompanying Decision and Order by the
2 Ethics Commission.

3 6. This Stipulation resolves all factual and legal issues raised in this matter by the Ethics
4 Commission without the necessity of holding an administrative hearing to determine the
5 Respondents' liability.

6 7. Respondents understand and knowingly and voluntarily waive any and all procedural
7 rights under the SDMC, including, but not limited to, a determination of probable cause, the
8 issuance and receipt of an administrative complaint, the right to appear personally in any
9 administrative hearing held in this matter, the right to confront and cross-examine witnesses
10 testifying at the hearing, the right to subpoena witnesses to testify at the hearing, and the right to
11 have the Ethics Commission or an impartial hearing officer hear this matter.

12 8. The parties agree that this Stipulation is binding upon the Ethics Commission, but is not
13 binding upon any other law enforcement or government agency and does not preclude the Ethics
14 Commission from cooperating with or assisting any other law enforcement or government agency
15 with regard to this or any other related matter. In the event that the Ethics Commission receives a
16 future complaint alleging a violation of the provisions of ECCO that are the subject of this
17 Stipulation, the Ethics Commission shall review the complaint to determine whether Respondents
18 have complied with the terms of this Stipulation. If such a review results in a determination that
19 Respondents have fully complied with the terms of this Stipulation, the complaint shall promptly
20 be dismissed. If the review results in a determination that the Respondents have not complied with
21 the terms of this Stipulation, the Ethics Commission may elect to either initiate a new enforcement
22 action and/or seek an order from a court of law enforcing the terms of this Stipulation.

23 9. The parties agree that it is their intent in entering into this stipulation to comply with the
24 law currently contained in the Political Reform Act [PRA] and ECCO in a manner that meets the
25 respective goals and objectives of the parties. If there are any changes in these laws that have a
26 material impact upon the implementation of this Stipulation, each party shall participate in a
27 good faith renegotiation of this Stipulation and shall not unreasonably withhold approval of any

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requested modifications to the Stipulation made by either party when it can be demonstrated that the requested modification is necessitated or warranted by changes in the law.

10. The parties agree that in the event the Ethics Commission refuses to accept this Stipulation, it shall become null and void. Respondents further agree that in the event the Ethics Commission rejects the Stipulation and a full evidentiary hearing before the City Ethics Commission becomes necessary, no member of the Ethics Commission or its staff shall be disqualified because of prior consideration of this Stipulation.

SUMMARY OF FACTS

11. On or before February 26, 2002, LCV entered into an agreement with Planned Parenthood to obtain a list of potential voters in San Diego Council Districts 2 and 4. On or after February 26, 2002, LCV received an invoice from Planned Parenthood seeking \$430.54 for the list of names. Thereafter, LCV paid the sum of \$430.54 to Planned Parenthood as payment in full of the invoice amount.

12. On March 8, 2002, the League and Treasurer filed a Campaign Disclosure Form, commonly known as a Form 496 Late Independent Expenditure Report, with the Office of the City Clerk for the City of San Diego. On April 29, 2002, the League and Treasurer filed an amended Form 496 with the Office of the City Clerk for the City of San Diego. These Reports reflect an independent expenditure made by LCV between February 26, 2002, and March 3, 2002, for a phone bank in support of Michael Zucchet, a candidate for the City Council District 2 seat in the March 5, 2002, Primary Election in the City of San Diego. The Reports also reflect a contribution from an organization.

13. On March 8, 2002, LCV and Treasurer filed a second Form 496 Late Independent Expenditure Report with the Office of the City Clerk for the City of San Diego. On April 29, 2002, the League and Treasurer filed another amended Form 496 with the Office of the City Clerk for the City of San Diego. These Reports reflect an independent expenditure made by LCV between February 26, 2002, and March 3, 2002, for a phone bank in support of Dwayne Crenshaw, a candidate for the City Council District 4 seat in the March 5, 2002, Primary Election in the City of San Diego.

1 14. On or about March 7, 2002, LCV paid to Telincs, Inc. the sums of \$2,456.60 and
2 \$1,848.80, as payment for the two phone banks identified in paragraphs 12 and 13. Such phone
3 banks were conducted by Telincs, Inc. with the use of the list of potential voters obtained from
4 Planned Parenthood as set forth in paragraph 11.

5 15. On March 27, 2002, LCV and Treasurer filed a four page Campaign Disclosure Form,
6 commonly known as a Form 460 Semi-annual Statement, with the Registrar of Voters for the
7 County of San Diego covering the period from July 1, 2001, through December 31, 2001.
8 Schedule A of this Campaign Disclosure Form reflects that LCV received a \$500 contribution
9 from an individual on December 23, 2001.

10 16. On July 15, 2002, LCV and Treasurer filed an eleven page Campaign Disclosure Form,
11 commonly known as a Form 460 Semi-annual Statement, with the Registrar of Voters for the
12 County of San Diego covering the period from January 1, 2002, through June 30, 2002.
13 Schedule A of this Campaign Disclosure Form reflects that LCV received a \$500 contribution
14 from Planned Parenthood Action Fund on January 7, 2002.

15 **COUNT 1**
16 **(Against LCV and Treasurer)**
[Violation of SDMC Section 27.2941(a)]

17 17. The City of San Diego prohibits candidates and campaign committees supporting or
18 opposing candidates from accepting campaign contributions from any individual in an amount in
19 excess of \$250 per election. This prohibition is codified in SDMC section 27.2941(a) and states
20 as follows:

21 It is unlawful for a candidate, committee supporting or opposing a candidate, or
22 individual acting on behalf of a candidate or committee to solicit or accept from
23 any other individual a contribution which will cause the total amount contributed
by that other individual in support of or opposition to a candidate to exceed two
hundred fifty dollars (\$250) for any single election.

24 18. As reflected in Schedule A of the Campaign Disclosure Form described above in
25 Paragraph 15, LCV and Treasurer accepted a contribution from an individual in the amount of
26 \$500 in violation of SDMC 27.2941(a).

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**COUNTS 2 and 3
(Against LCV and Treasurer)
[Violations of SDMC Section 27.2947(a)]**

19. The City of San Diego prohibits candidates and campaign committees supporting or opposing candidates from accepting campaign contributions from organizations. This prohibition is codified in SDMC section 27.2947(a) and states as follows:

It is unlawful for a candidate, committee, committee treasurer or other person acting on behalf of a candidate or committee to accept a contribution from any person other than an individual.

20. As reflected in Paragraph 16, LCV and Treasurer accepted a \$500 contribution from an organization, Planned Parenthood, in violation of SDMC section 27.2947(a).

21. As reflected in the Campaign Disclosure Form described above in Paragraph 12, LCV and Treasurer accepted a contribution from an organization.

**COUNT 4
(Against LCV and Treasurer)
[Violation of SDMC Sections 27.2941 and 27.2947(b)]**

22. SDMC section 27.2903 contains a comprehensive and detailed definition of “contribution” that reads in pertinent part as follows: “Contribution” includes: . . . (4) any expenditure made at the behest of a candidate or committee or elective officer, unless full and adequate consideration is received for making the expenditure.” This definition states that “contribution” does not include “independent expenditures.”

23. SDMC section 27.2903 also defines “independent expenditure,” which reads in pertinent part as follows: “An expenditure that is made to or at the behest of a candidate or a committee is not an independent expenditure.”

24. According to ECCO, a committee that makes an expenditure “at the behest” of another committee is not making an “independent expenditure,” but is instead making a “contribution” to the committee that the expenditure was made at the behest of.

25. Title 2, section 18225.7 of the California Code of Regulations defines “made at the behest of” as follows:

(a) “Made at the behest of” means made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of. Such arrangement must occur

1 prior to the making of a communication described in Government Code Section
2 82031.

3 (b) An expenditure is presumed to be made at the behest of a candidate or committee
4 if it is:

5 (1) Based on information about the candidate's or committee's
6 campaign needs or plans provided to the expending person by the
7 candidate, committee, or agents thereof; or

8 (2) Made by or through any agent of the candidate or committee in the
9 course of their involvement in the current campaign.

10 (c) An expenditure is not made at the behest of a candidate or committee merely when:

11 (1) A person interviews a candidate on issues affecting the expending
12 person, provided that prior to making a subsequent expenditure,
13 that person has not communicated with the candidate or the
14 candidate's agents concerning the expenditure; or

15 (2) The expending person has obtained a photograph, biography,
16 position paper, press release, or similar material from the candidate
17 or the candidate's agents.

18 26. When LCV and Treasurer paid Telincs, Inc. for phone banks using the information it
19 received from Planned Parenthood, LCV was acting in "cooperation, consultation, coordination,
20 or concert with" Planned Parenthood, was acting at the behest of Planned Parenthood, and was
21 therefore making a contribution to Planned Parenthood. In so doing, LCV and Treasurer violated
22 SDMC section 27.2941(b) by making a contribution in excess of \$250, and violated SDMC
23 section 27.2947 by making an organizational contribution supporting candidates for elective
24 office in the City of San Diego.

25 **STIPULATIONS AND ORDER**

26 **AUTHORITY OF CITY TO REGULATE CONTRIBUTIONS**

27 27. The parties acknowledge, understand, and agree that for City candidate elections a stated
28 purpose of ECCO, as set forth in SDMC section 27.2901, is to "prohibit contributions by
organizations in order to develop a broader base of political efficacy with the community," and
agree that ECCO regulates contributions to committees that make independent expenditures in
support of a City candidate as stated in Paragraph 27.2947(c) as follows:

For purposes of section 27.2947(a) and (b), the term "committee" includes any
committee that makes independent expenditures, in addition to any controlled
committee.

28. Respondents acknowledge that the making of independent expenditures from a committee receiving both individual and organizational contributions may cause the public to believe that an independent expenditure has been made from organizational contributions even if the independent expenditures do not exceed the amount of contributions that can be attributable to individuals.

29. Respondents acknowledge that the prohibition of commingled contributions contained in ECCO is a safeguard to give the public confidence that organizational contributions are not being expended in support of or opposition to candidates running for office in the City of San Diego.

30. Respondents acknowledge that ECCO prohibits a committee from accepting a contribution from an organization unless the committee is organized solely for the purpose of supporting or opposing the qualification of a City measure for the ballot, or the adoption or defeat of a City measure, and the committee pursues no other purpose.

31. Respondents acknowledge that ECCO’s prohibition against two or more committees coordinating expenditures is a safeguard to give the public confidence that independent expenditures made to support or oppose a candidate for elective office are truly “independent” and not the result of multiple parties acting in concert.

AGREEMENTS

32. Respondents acknowledge, understand, and agree that should LCV decide in the future to make independent expenditures greater than \$1,000 to support or oppose a candidate for elected office of the City of San Diego in any City of San Diego election, it may do so through a committee organized and registered with the State of California as a General Purpose Recipient Committee or a Primarily Formed Recipient Committee, but must adhere strictly to the mandates of SDMC sections 27.2941 and 27.2947, and take reasonable and necessary measures to ensure that it only accepts contributions from individuals and that the amount of such contributions do not cause the total amount contributed by that individual in support or opposition to a candidate to exceed two hundred fifty dollars (\$250) for any single election. If Respondent's committee accepts \$500 (from an individual who earmarks a \$250 contribution for a primary election and \$250 for a general election), the Campaign Disclosure Form reporting such contribution shall

1 reflect two line items earmarking \$250 for the Primary Election and \$250 for the General
2 Election. No organizational contributions may be accepted by such committee, even if the
3 organizational contributions are not used to support or oppose a candidate for elected office of
4 the City of San Diego in any City of San Diego election.

5 33. Respondents acknowledge, understand, and agree that any contributions deposited into a
6 checking account containing organizational contributions must be transferred into a checking
7 account for a committee that has not accepted organizational contributions before such funds
8 may be spent on a candidate election in the City of San Diego. Such transfer shall be disclosed
9 on a campaign statement showing that LCV was an intermediary and the contribution was
10 earmarked and attributed to an individual making a contribution supporting or opposing a
11 particular candidate.

12 34. Respondents acknowledge, understand, and agree that it may accept contributions
13 through the California League of Conservation Voters, a California public benefit corporation
14 (California Secretary of State corporation identification number C1826893) [California League],
15 but only if the contributions are from individuals and the California League's role in the transfer
16 of the contribution is limited to that of an intermediary. Such contributions shall be disclosed by
17 LCV on a campaign statement identifying each individual contributor as required under state law
18 with an indication that the contributions from individuals were made to support or oppose a
19 particular candidate through an intermediary – the California League. Contributions made in this
20 manner are considered contributions from individuals and therefore will not violate the
21 prohibition against organizational contributions outlined above in paragraph 30.

22 35. Respondents acknowledge, understand, and agree that if a LCV committee chooses to
23 accept a contribution from an organization, that committee may not use such funds to support or
24 oppose a candidate in a City of San Diego election, nor may it co-mingle such funds with other
25 monies used to support or oppose a candidate in a City of San Diego election.

26 36. Respondents acknowledge, understand, and agree that LCV committees shall not make
27 any expenditures supporting or opposing a candidate for elective office in the City of San Diego
28 if such expenditure is made at the behest of a candidate or other committee.

37. Respondents acknowledge, understand, and agree that LCV committees shall not make any expenditures supporting or opposing a candidate for elective office in the City of San Diego that are under the control of, at the direction of, in cooperation with, in consultation with, in coordination with, in concert with, at the request or suggestion of, or with the express, prior consent of, a candidate or other committee.

38. Respondents acknowledge, understand, and agree that, in accordance with the definitions contained in SDMC section 27.2903 and California Government Code section 82013, LCV is a “committee” if it receives contributions totaling one thousand dollars or more in a calendar year, or makes independent expenditures totaling one thousand dollars or more in a calendar year.

39. Respondents acknowledge, understand, and agree that if LCV is a committee as set forth in paragraph 38, the committee shall, in accordance with the requirements of SDMC section 27.2921, establish its own campaign contribution checking account at an office of a bank or other financial institution providing checking account services located in the City of San Diego.

40. Respondents acknowledge, understand, and agree that if LCV creates a separate committee (such as a Primarily Formed Recipient Committee formed to support a single candidate or measure), that separate committee shall, in accordance with the requirements of SDMC section 27.2921, establish its own campaign contribution checking account at an office of a bank or other financial institution providing checking account services located in the City of San Diego.

41. The parties acknowledge, understand, and agree that this Stipulation applies solely to LCV's participation in campaigns for elective office in the City of San Diego, and is not intended to control any aspect of LCV's ability to establish other political committees to participate in elections in other cities or at the County, State, or Federal level.

FACTORS IN AGGRAVATION

42. ECCO unambiguously prohibits the acceptance of individual contributions that exceed \$250 per candidate per election, and unambiguously prohibits the acceptance of organizational contributions by committees supporting or opposing candidates running for elective office in the City of San Diego. A letter on file in the Clerk's Office reflects that correspondence was sent to

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1 LCV on January 10, 2002, specifically calling attention to the provisions in ECCO which
2 prohibit organizational contributions.

3 **FACTORS IN MITIGATION**

4 43. Respondents have not shown any intention to conceal, deceive, or mislead. Respondents
5 have been sincere and have cooperated fully with Ethics Commission staff in assisting with the
6 investigation. Respondent Michael Beck is a novice Treasurer and admits to not being familiar
7 with ECCO. Because of Respondents' good faith effort to comply with ECCO and the technical
8 nature of the violations, it is agreed by the parties that a fine is not warranted in this matter.

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11 DATED: _____

CHARLES B. WALKER, Executive Director
EXECUTIVE DIRECTOR ETHICS COMMISSION
Complainant

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14 DATED: _____

The League of Conservation Voters, San Diego
Respondent

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16 DATED: _____

Michael Beck
Respondent

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20 **DECISION AND ORDER**

21 The Ethics Commission has considered the above Stipulation at its meeting on October 10, 2002.

22 The Ethics Commission hereby approves the Stipulation.

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24 DATED: _____

DOROTHY LEONARD, Chair
SAN DIEGO ETHICS COMMISSION